In the High Court of Judicature at Madras

Dated : 06.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.8036 of 2018 & WMP.Nos.10009 & 10010 of 2018

S.Thajudeen ...Petitioner

Vs

The Deputy Commercial Tax Officer,
Villupuram II Circle, Villupuram,
Villupuram District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN No.33614702025/ 2012-13 dated 15.7.2015 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging an order of assessment dated 15.7.2015 for the year 2012-13 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. Since the petitioner has not availed the appeal remedy, this Court would have been fully justified in rejecting the writ petition. Even assuming that the appeal is to be presented, as on date, the Appellate Authority will not be in a position to entertain the appeal, as it is beyond the condonable period of limitation. That apart, though the impugned order was passed on 15.7.2015, a partial recovery alone has been made on 28.3.2018. Thus, the impugned assessment order remained as a paper order without the tax being recovered.

4. As per the impugned assessment order, the balance tax payable by the petitioner is Rs.1,30,104/-, out of which, some

amount has been recovered and the balance tax to be payable is Rs.97,578/- as per the bank attachment notice dated 27.1.2018. The issue involved in this case pertains to mismatch of the details in the returns filed by the petitioner and the details reflected in the official website of the Department. Therefore, one opportunity can be granted to the petitioner to reconcile the differences. However, taking note of the fact that the petitioner has not prosecuted the matter since 2015, this Court deems fit to impose a condition so as to enable the petitioner to go before the Assessing Officer.

5. Accordingly, the writ petition stands disposed of with a direction to the petitioner to pay 25% of the disputed tax within a period of three weeks from the date of receipt of a copy of this order. If the said condition is complied with, the petitioner is entitled to treat the impugned order as a show cause notice and submit their objections within a period of two weeks therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. It is made clear that if the petitioner fails to comply with the condition imposed, the benefit of this order will not enure to the petitioner and the writ petition will stand automatically dismissed giving liberty to the respondent to initiate recovery proceedings. On the other hand, if the petitioner complies with the said condition, the demand of the balance tax and penalty for the assessment year 2012-13 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMPs are closed.

Sd
ASSISTANT REGISTRAR (C.C.C.)

TRUE COPY

SUB ASSISTANT REGISTRAR

To
The Deputy Commercial Tax Officer, Villupuram II Circle,
Villupuram, Villupuram District.

1CC TO MRS. R. HEMALATHA, ADVOCATE SR.NO. 25467
1CC TO THE SPL GOVERNMENT PLEADER SR.NO. 26029

WP.No.8036 of 2018 & WMP.Nos.10009 & 10010 of 2018

DM
18 APRIL 2018